

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PETERSEN ENERGÍA INVERSORA, S.A.U. and  
PETERSEN ENERGÍA, S.A.U.,

Plaintiffs,

-against-

ARGENTINE REPUBLIC and YPF S.A.,

Defendants.

Case Nos.:

1:15-cv-02739-LAP  
1:16-cv-08569-LAP

ETON PARK CAPITAL MANAGEMENT, L.P.,  
ETON PARK MASTER FUND, LTD., and  
ETON PARK FUND, L.P.,

Plaintiffs,

-against-

ARGENTINE REPUBLIC and YPF S.A.,

Defendants.

**PLAINTFFS' REPLY IN SUPPORT OF PRE-MOTION CONFERENCE LETTER  
AND REPORT REGARDING STATUS OF DISCOVERY**

KING & SPALDING LLP

Israel Dahan  
Laura E. Harris  
1185 Avenue of the Americas  
New York, New York 10036

Reginald R. Smith (*pro hac vice*)  
1100 Louisiana Street  
Houston, Texas 77002

KELLOGG, HANSEN, TODD,  
FIGEL & FREDERICK, P.L.L.C.

Mark C. Hansen  
Derek T. Ho  
Andrew E. Goldsmith  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036

*Counsel for Plaintiffs Petersen Energía Inversora, S.A.U., Petersen Energía, S.A.U.,  
Eton Park Capital Management, L.P., Eton Park Master Fund, Ltd., and Eton Park Fund, L.P.*

Plaintiffs respectfully submit this reply in anticipation of the February 18, 2021 status conference. Much of Defendants' submission, *Petersen* Dkt. No. 284, is irrelevant to the three issues before the Court: Defendants' deficient document productions, in particular with respect to their affirmative defenses; YPF's baseless refusal to produce individual custodians' documents until it obtains their consent; and how much time is needed for the completion of discovery.

First, Defendants inform the Court (at 16) that they will produce "documents relevant to" their affirmative defenses, but hours before filing their submission YPF told Plaintiffs in a letter that they will produce only documents "supporting" those defenses, Ltr. from M. Goodman to L. Harris at 4 (Feb. 17, 2021), Ex. 1. The latter is insufficient, and the Court should order both Defendants to comply with the representation in their submission. As to the parameters of their searches, the Republic asserts (at 3) that it was in the process of responding to the issues Plaintiffs raised when they filed their status report and pre-motion conference letter. Assuming the truth of that convenient assertion, Plaintiffs raised these questions with the Republic on December 2, 2020. *See* Ltr. from L. Harris to Counsel for Republic (Dec. 2, 2020), Ex. 2. The pandemic does not justify waiting 11 weeks before, for example, "determin[ing] whether email exists" for the individuals Plaintiffs identified, as the Republic now says (at 15) it is doing. The Court should not endorse Defendants' apparent strategy of (at best) slow-rolling their document productions until Plaintiffs raise their deficiencies with the Court.

Second, YPF plays word games with respect to its manufactured need to obtain consent from custodians. YPF insists (at 9) that it is not "withholding" documents; it instead has "sought the consent of document custodians prior to producing their documents." That is a distinction without a difference. Plainly, YPF possesses, but will not produce, the documents. The Court

should order YPF to cease the consent charade and produce the documents in its possession. The broad provisions of Argentine law that YPF cites (at 9 n.4) do not require YPF to obtain consent first. On their face, these provisions do not address employee consent or otherwise support YPF's claim. *See Exs. 3-6.*<sup>1</sup> Even if they did, YPF has no answer to the cases Plaintiffs cited requiring YPF to produce without waiting for consent. *See Dkt. No. 279 at 7.*

YPF attempts (at 10-11) to blame Plaintiffs for their delay with respect to documents of the four Eskenazi family members and Mauro Dacomo. When YPF asked Plaintiffs to obtain those individuals' consent, Plaintiffs promptly conveyed the request to counsel for Grupo Petersen. Ltr. from A. Goldsmith to L. Lopez (Nov. 2, 2020), Ex. 7. As YPF notes (at 10), it has made the request again of their U.S. counsel, Steven Reisberg. In any event, YPF should produce the documents without waiting for consent. In addition, YPF should explain why it is apparently producing for only 12 custodians – the Eskenazis, Dacomo, and seven others, *see Dkt. No. 284 at 10 – [REDACTED]* claimed by its 30(b)(6) designee, *see O'Durnin Tr. 63, Ex. 8.*

Third, a one-month extension of the discovery schedule is sufficient provided the parties and the witnesses proceed in good faith and with expedition to complete discovery. Defendants have had Plaintiffs' requests since August, and the Eskenazis have had Defendants' requests since October. This discovery is in process, as we reported last Thursday to the Court. It is past time that fact discovery is completed.

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<sup>1</sup> Article 19 of the Argentine Constitution, for example, merely states that “private actions of men which are in no way contrary to public order or morality and are not injurious to a third party, are reserved solely to God and are exempt from the authority of judges.” Ex. 3 at 1, 4.

Defendants attempt to create a fourth issue out of the discovery from the Eskenazis. But there is no request before the Court for any intervention with respect to them.<sup>2</sup> As Plaintiffs explained (at 11-17), the production of documents and provision of testimony from the Eskenazis is ongoing, largely thanks to Plaintiffs' efforts as described in our status report submitted last Thursday. Plaintiffs repeatedly asked Mr. Reisberg to attend the February 18 conference, but he has declined.

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By: /s/ Mark C. Hansen

Israel Dahan  
Laura E. Harris  
KING & SPALDING LLP  
1185 Avenue of the Americas  
New York, New York 10036  
Phone: (212) 556-2114  
Fax: (212) 556-2222  
Email: idahan@kslaw.com  
Email: lharris@kslaw.com

Reginald R. Smith (*pro hac vice*)  
KING & SPALDING LLP  
1100 Louisiana Street  
Houston, Texas 77002  
Phone: (713) 751-3200  
Fax: (713) 751-3290  
Email: rsmith@kslaw.com

Mark C. Hansen  
Derek T. Ho  
Andrew E. Goldsmith  
KELLOGG, HANSEN, TODD,  
FIGEL & FREDERICK, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
Phone: (202) 326-7900  
Fax: (202) 326-7999  
Email: mhansen@kellogghansen.com  
Email: dho@kellogghansen.com  
Email: agoldsmith@kellogghansen.com

*Counsel for Plaintiffs Petersen Energía Inversora, S.A.U., Petersen Energía, S.A.U., Eton Park Capital Management, L.P., Eton Park Master Fund, Ltd., and Eton Park Fund, L.P.*

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<sup>2</sup> Defendants, the day before the status conference, request an order compelling Plaintiffs to provide discovery from the four members of the Eskenazi family. That request is inappropriate because it fails to comply with the Court's rules for pre-motion letters, which allow three business days for a response, rather than a matter of hours. It is also unnecessary given the ongoing discovery from the Eskenazis that is described in our February 11 status report.